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July 24, 2019

Judge Mary Kay Vyskocil
United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, New York 10004-1408

Re: Ronald L. Cohen, Esq., Chapter 7 Trustee v. Andrew Charles
Adversary Proceeding No. 18-01646 (MKV)

Judge Vyskocil:

I am a Partner at Kamerman, Uncyk, Soniker & Klein P.C., counsel to Defendant in the above captioned action. I write, pursuant to Local Rule 7056-1(a), to seek leave to move for summary judgment and sanctions under Rule 11, 28 U.S.C. § 1927, and 11 U.S.C. § 105.

Briefly, Debtor is First Wives Entertainment Limited Liability Company (“FWE”). On September 26, 2018, FWE’s Trustee filed an adversary proceeding against Charles, alleging FWE fraudulently transferred \$300,000.00 from “its bank account” to Charles in August 2014 (Dkt No. 1, ¶ 31). The Trustee further alleged that the money “was for repayment of a loan that [Charles] had made to another entity, and the Debtor received no value on account of the Transfer.” (*Id.*, ¶ 32). The truth, as the Trustee admitted at deposition he was well aware at the time he filed his frivolous complaint, was very different.

First, the Trustee was fully aware at the time he issued the Complaint that the transfer was not made by the Debtor, FWE, but by a related entity, First Wives US/Australia Limited Liability Company (“US/Australia”), from US/Australia’s (not Debtor’s) bank account (Deposition of Ronald Cohen (“Cohen Dep.”) at 34:8-37:16, 57:14-58:4; 97:8-110:9).¹ The Trustee’s theory of the case (unpled and unarticulated in the Complaint) is that the principals of US/Australia had a subjective intent to later transfer US/Australia’s assets to FWE, and that purported subjective intent – which the Trustee acknowledges was not legally binding – meant that US/Australia’s funds transferred to Charles were Debtor’s property even though Debtor had no legal or equitable claim on the funds at the time of the transfer. (*Id.* at 34:8-37:16, 94:4-12, 95:4-96:25).² Of course, it is axiomatic that only the transfer of property belonging to the Debtor, or in which Debtor had an equitable interest, can support a fraudulent conveyance claim under Section 548 of the Bankruptcy Code. *See In re Plassein Int’l Corp.*, 366 B.R. 318, 326 (Bankr. D. Del. 2007) (no “claim for avoidance of a fraudulent conveyance because the Trustee does not allege that either Plassein or any other Debtor made any transfers ... Since no Debtor made a transfer, there is no legal basis for any fraudulent conveyance claim.”), *aff’d*, 388 B.R. 46

¹ Copies of the relevant pages of Mr. Cohen’s deposition are annexed hereto as Exhibit A.

² US/Australia and FWE did not merge; rather, they continued as separate legal entities.

(D. Del. 2008), *aff'd*, 590 F.3d 252 (3d Cir. 2009). Because it is undisputed that no property of the Debtor was conveyed, and no conveyance was made by Debtor, Charles is entitled to summary judgment. Moreover, because the Trustee and his counsel were aware of this at the outset of the case, the action is frivolous, and the Trustee's and counsel's repeated refusals to dismiss the litigation is sanctionable.

Second, that is not the only frivolous aspect of this case. The Trustee was equally aware, at the time that he issued the Complaint, that the payment to Charles was made by US/Australia on account of the \$300,000.00 debt Reach Out Entertainment ("ROE") owed Charles. (Cohen Dep. at 38:7-19; 57:14-59:4). The Trustee was fully aware that at the time of the allegedly fraudulent transfer, US/Australia owed ROE significantly more than \$300,000.00. (*Id.* at 170:11-21; 185:10-187:13). And the Trustee acknowledged that had the payment to Charles been made first to ROE, and then from ROE to Charles, he would not have filed the fraudulent conveyance action against Charles. (*Id.* at 163:15-166:3; 185:10-187:13).

But it is well-settled that a debtor's payment to a third party on behalf of a creditor, which reduces the debtor's own debt to that creditor, is "value" for purposes of a fraudulent conveyance claim. *See Rubin v. Manufacturers Hanover Tr. Co.*, 661 F.2d 979, 992 (2d Cir. 1981) ("fair consideration will often exist for a novation, where the debtor's discharge of a third person's debt also discharges his own debt to that third person"); *Klein v. Tabatchnick*, 610 F.2d 1043, 1047 (2d Cir. 1979) ("Benefit to a debtor need not be direct; it may come indirectly through benefit to a third person"); *Barr Creelman Plumbing Supply Co. v. Zoller*, 109 F.2d 924, 926 (2d Cir. 1940) ("[i]t would have been proper for [Debtor] to satisfy part of its debt to [Creditor] by writing these checks in favor of [Creditor]'s creditor, the appellant"). Thus, even if US/Australia was the equivalent of the Debtor for purposes of a fraudulent conveyance action, the Trustee was fully aware, at the time he issued the Complaint, that US/Australia (and the Debtor) received exactly equivalent value for the conveyance.

Despite these facts and clearly established law, which counsel for Mr. Charles has repeatedly called to the attention of counsel for the Trustee, the Trustee and his counsel have repeatedly refused to voluntarily dismiss the action. Given the lack of any colorable basis for the Trustee's claims (from the time they were made to the present),³ and that the Trustee pled his claims in a manner that hid his contention that US/Australia's assets could be deemed Debtor's (by falsely alleging that the transfer was made from Debtor's bank account), and thereby precluded a motion to dismiss, sanctions are appropriate. *See In re Khan*, 488 B.R. 515, 535 (Bankr. E.D.N.Y. 2013), *aff'd sub nom. Dahiya v. Kramer*, No. 13-CV-3079 DLI, 2014 WL 1278131 (E.D.N.Y. Mar. 27, 2014), *aff'd sub nom. In re Khan*, 593 F. App'x 83 (2d Cir. 2015). Leave to move for summary judgment and sanctions should be granted.

Respectfully submitted,


Akiva M. Cohen

AMC:cl

³ The Trustee repeatedly testified that his ignorance of the well-settled law governing novation was the basis for *all* of the adversary proceedings he brought. (Cohen Dep. at 170:22-174:6; 182:4-25).

EXHIBIT A

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 In re:

4 FIRST WIVES ENTERTAINMENT LIMITED

5 Chapter 7

6 Case No. 16-11345 (MKV)

7 Debtor.

8 RONALD L. COHEN, ESQ., Chapter 7 Trustee of
9 The Estate of FIRST WIVES ENTERTAINMENT
10 LIMITED LIABILITY COMPANY

11 Adv. Pro No 18-01646 (MKV)

12 Plaintiff,

13 V.

14 ANDREW CHARLES,

15 Defendant.

16 Volume 2

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CONTINUED DEPOSITION OF RONALD COHEN
New York, New York
Monday, July 1, 2019

Reported by:
Mark Richman, CSR, RPR, CM
Job No. 163119

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7 July 1, 2019
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Continued Deposition of RONALD COHEN,
held at the offices of KAMERMAN, UNCYK,
SONIKER & KLEIN P.C., 1700 Broadway,
42nd Floor, New York, New York,
New York before Mark Richman, a Certified
Shorthand Reporter, Registered
Professional Reporter and Notary Public
within and for the State of New York.

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A P P E A R A N C E S :

ROSEN & ASSOCIATES
Attorneys for Plaintiff
747 Third Avenue
New York, New York 10017
BY: SANFORD ROSEN, ESQ.
JUSTIN RYU, ESQ.

KAMERMAN, UNCYK, SONIKER & KLEIN
Attorneys for Defendant
1700 Broadway
New York, New York 10019
BY: AKIVA COHEN, ESQ.

1 RONALD COHEN
2 RONALD COHEN, called as a
3 witness, having been first duly sworn
4 by the Notary Public (Mark Richman),
5 was examined and testified as
6 follows:

7 EXAMINATION BY MR. COHEN:

8 Q. Thank you for coming back. I
9 just want to make sure that I completely
10 understand your testimony from the last
11 time you were here. The trustee's
12 position with respect to the transfer
13 alleged here is it was a transfer from
14 First Wives US/Australia Ltd. to my
15 client Mr. Charles, correct?

16 A. In part. Correct in part.

17 Q. Which part of it is not correct?

18 A. Because I believe we've -- I
19 stated last time -- I don't have the
20 transcript before me and I have not had
21 a chance to review it -- but whatever it
22 says it says. But I believe our
23 position has been at the time of that
24 transfer it was the intent and purpose
25 of people at, running First Wives US

1 RONALD COHEN
2 that First Wives Australia, that entity
3 would be rolled into or was in the
4 process of being rolled into First
5 Wives, the debtor here, and that that
6 transfer was therefore of assets of the
7 debtor here.

8 Q. Okay.

9 A. That's our position.

10 Q. Understood. Understood.

11 A. Just so that's clear.

12 Q. And you anticipated my next
13 question so I think we're all on the
14 same page. I believe you alleged in
15 your complaint in this action that that
16 was actually, that transfer to Mr.
17 Charles was actually the payment of
18 another company's debt to him, correct,
19 Reachout Entertainment, yes?

20 A. That's what we understood, yes.

21 Q. Now, in your complaint you
22 described the bank account that the
23 money came out of as the debtor's bank
24 account. Do you recall that?

25 A. What I do recall is that we

1 RONALD COHEN

2 allege it was its property that was
 3 transferred ant the use of the word its
 4 in my view would cover such a situation
 5 as I just described in my prior answer.

6 Q. Okay. If you said that it came
 7 out of its account, the debtor's
 8 account, would that have been an
 9 accurate statement?

10 A. I believe it would be accurate to
 11 the extent that you can understand, as
 12 we have alleged, as I said earlier, this
 13 was --

14 MR. ROSEN: Objection.

15 Q. Okay, you can continue your
 16 answer.

17 A. My answer is that partly you're
 18 asking legal conclusion, I think. But
 19 beyond that issue, my understanding is
 20 that the people running First Wives, the
 21 debtor at that time intended and were in
 22 process of effectuating what I'll call
 23 the turnover or the use of the assets of
 24 First Wives Australia to deal with First
 25 Wives US. And shortly thereafter the

1 RONALD COHEN

2 transfer to you, they did effectuate a
 3 transfer of the money in First Wives
 4 Australia bank account into a separate
 5 bank account of the debtor.

6 So whether at the time of the
 7 transfer of the First Wives Australia
 8 was already the debtor's account or in
 9 the process of becoming the debtor's
 10 account or was an alter ego of the
 11 debtor where one entity was an alter ego
 12 of the other and therefore the property
 13 was the debtor's property, that's all to
 14 be determined by the court I would
 15 assume, but that's where we are going on
 16 the facts.

17 Q. You've alleged that the transfer
 18 to Mr. Charles was a fraudulent
 19 conveyance, correct?

20 A. Correct.

21 Q. And as you understand it, that
 22 means that the debtor didn't get fair
 23 value in exchange for that transfer,
 24 correct?

25 MR. ROSEN: Objection.

1 RONALD COHEN

2 A. You're stating a legal
 3 conclusion. But my understanding is
 4 yes, that's the debtor did not receive
 5 their value, the payment of that other
 6 company's debt.

7 Q. If you believed that the debtor
 8 had received fair value, would you have
 9 authorized this claim?

10 MR. ROSEN: Objection.

11 A. The answer is it would not meet
 12 the legal criteria of a fraudulent
 13 transfer.

14 Q. Given your position --

15 A. By the way, the other company we
 16 are talking about was not First Wives
 17 Australia.

18 Q. Reachout Entertainment?

19 A. Yes.

20 Q. You sort of anticipated my next
 21 question. If you at First Wives
 22 US/Australia had received fair value in
 23 exchange for this transfer, would you
 24 have authorized bringing a fraudulent
 25 conveyance claim?

1 RONALD COHEN

2 MR. ROSEN: Objection.

3 Q. You can answer.

4 A. I don't know.

5 Q. If your position is that First
 6 Wives US/Australia is an alter ego of
 7 the debtor, then for purposes of
 8 transfers of its assets being assets of
 9 the debtor, then wouldn't you also have
 10 to acknowledge that if First Wives
 11 US/Australia received fair value then so
 12 did the debtor?

13 MR. ROSEN: Objection.

14 A. I don't think I have to
 15 acknowledge anything in this situation.
 16 All I have to do is prove less than fair
 17 value to this debtor.

18 Whether or not, you know, there
 19 was value to the First Wives Australia I
 20 guess is another question. Maybe it's a
 21 defense for you to allege, I'm not sure.
 22 But I don't think it's part of my burden
 23 here.

24 Q. Okay. I just want to understand,
 25 just want to understand your position.

1 RONALD COHEN
 2 Entertainment Limited Liability Company,
 3 correct?

4 A. Yes, that's correct.

5 Q. Okay. It is true, is it not,
 6 that my client is the only person who
 7 received a transfer from First Wives
 8 US/Australia that you are seeking to
 9 recover as a transfer of property of the
 10 debtor, correct?

11 A. I don't believe any of these
 12 others involve the bank --- let's put
 13 it this way. At the time of -- at the
 14 time of -- at the time of the transfer
 15 to your client preceded all of these by
 16 approximately two months and I believe
 17 that at the time of the transfer to your
 18 client First Wives US was -- had just
 19 been formed, just been formed and
 20 organized and was in the process of
 21 getting a bank account opened which it
 22 subsequently did open. And I believe at
 23 some point as I said earlier, the money
 24 from First Wives Australia that was in
 25 its account, including money that was

1 RONALD COHEN
 2 left after the \$300,000 sent to your
 3 client, was put into the First Wives
 4 debtor bank account.

5 Q. Okay.

6 A. So that's what I believe was the
 7 facts. I believe that in all the
 8 complaints you've mentioned here --

9 Q. I'm going to cut you off here.

10 A. Fine.

11 Q. Because that wasn't the question
 12 I asked.

13 A. Okay.

14 Q. The question was have you brought
 15 any adversary proceedings against
 16 anybody other than my client who
 17 received funds from the First Wives
 18 US/Australia bank account?

19 A. No.

20 Q. Okay. Why not?

21 A. Well first of all, we had records
 22 going back only so far. And prior to
 23 filing of the complaint we reviewed
 24 certain documents and we noticed some
 25 information about this transfer. We

1 RONALD COHEN
 2 noticed that it had gone out a day or so
 3 before the money was sent to First Wives
 4 US's bank account.

5 We noticed that there was
 6 information concerning Mr. Charles in
 7 our files concerning his address and
 8 where he was.

9 We thought, from maybe notes we
 10 had taken, that there's some involvement
 11 with Mr. -- I think it was Hassan in
 12 some way, I'm not sure, but there was
 13 some connection between those people.
 14 And when we saw in notes and emails
 15 references to the fact that people
 16 sending the money out believed this was
 17 property of the debtor and it was the
 18 debtor's property, did not refer to it
 19 as separate entity's property, we felt
 20 this was basis to bring a claim against
 21 Mr. Charles, particularly because we had
 22 the information that it was for Reachout
 23 Entertainment. It was stated right in
 24 an email it was repay a loan that Mr.
 25 Charles had made to Reachout

1 RONALD COHEN
 2 Entertainment, not to First Wives
 3 Australia, not to First Wives US but to
 4 Reachout Entertainment.

5 We felt this was a sufficient
 6 basis against this particular defendant
 7 to bring this suit. We did not have any
 8 of that information as to any other
 9 payments out from First Wives
 10 Australia's account.

11 Q. Did you have First Wives
 12 Australia's bank statements at the time?

13 A. We had First Wives -- yes, we had
 14 some First Wives Australia bank
 15 statements in the boxes that were in my
 16 office that had been received from
 17 Ms. Marino, Ms. Mazur-Marino her name
 18 is.

19 MR. COHEN: Let's mark this one.

20 (Exhibit 10, FWC US/Australia
 21 cash flow report was marked for
 22 identification.)

23 Q. Who is Ms. Mazur Marino?

24 A. She was the prior Chapter 7
 25 trustee that I succeeded. Of the debtor

1 RONALD COHEN
 2 anything from Mr. Choueka or otherwise
 3 that would contradict it, correct?

4 MR. ROSEN: Objection.

5 A. I've never talked to Mr. Choueka,
 6 and otherwise I don't know who that
 7 would encompass. But certainly I have
 8 nothing from Mr. Choueka, I've never
 9 talked to him.

10 Q. You never heard otherwise from
 11 anybody, correct?

12 MR. ROSEN: Objection.

13 A. Otherwise that it was the
 14 intention to have these assets and
 15 liabilities both go over to First Wives,
 16 I haven't heard -- I have not heard that
 17 from anybody else that it wasn't.

18 Q. Okay. And you are confident that
 19 it was the intent to have the assets
 20 travel over, correct?

21 A. Well, the reason on the asset
 22 side I have more than little confidence
 23 is that there actually was asset
 24 transfers. I believe there was an
 25 assignment of the rights and I believe

1 RONALD COHEN
 2 capital going to First Wives
 3 US/Australia?

4 A. No, I haven't. But doesn't
 5 escape me possible that there was other
 6 things going on. The fact that people
 7 intended to do one thing does not
 8 automatically mean that they did it, and
 9 it also doesn't mean intending to do one
 10 thing and doing that meant they did the
 11 other thing which is have the
 12 liabilities actually be assumed.

13 Q. Right.

14 A. And by the way, by the way just
 15 so it's clear, you know, the other
 16 claims we made against people who claim,
 17 who we've claimed were repaid by the
 18 debtor for having, on behalf of -- the
 19 other people who we have sued who we
 20 mentioned here in the earlier exhibits,
 21 4 through whatever it was, 9, that we
 22 sued, were also alleged to have received
 23 -- Reachout Entertainment, made loans to
 24 Reachout Entertainment and received
 25 funds from the debtor. So it's right up

1 RONALD COHEN
 2 there was a transfer of money in a bank
 3 account, maybe more than one transfer.
 4 I certainly noted there was a transfer
 5 right after your client got paid.

6 Q. And so given that transfer of all
 7 of the assets out of First Wives
 8 US/Australia to First Wives
 9 Entertainment, then really only one of
 10 two things is possible, right, either
 11 the debts traveled with the assets or
 12 that transfer of assets to the debtor
 13 was a fraudulent conveyance, correct?

14 MR. ROSEN: Objection.

15 A. That's two possibilities. There
 16 may be others.

17 Q. Can you think of any others?

18 A. Maybe it was an investment.

19 MR. ROSEN: Objection.

20 A. Maybe it was an investment. I
 21 don't know. Maybe it was -- maybe they
 22 were going to have the capital go to
 23 First Wives Australia. I don't know.
 24 There could be other things it was.

25 Q. Have you seen anything with

1 RONALD COHEN
 2 the same alley in my view as those
 3 claims.

4 Q. I want to focus on what you
 5 talked about with intent though for a
 6 second.

7 Because you said the fact that
 8 people intended to do one thing does not
 9 automatically mean that they did it,
 10 correct?

11 A. That's correct.

12 Q. Okay. And in fact the fact that
 13 people intend to do something doesn't
 14 mean they are legally barred from
 15 changing their minds, correct?

16 MR. ROSEN: Objection.

17 A. Legally barred? Of course
 18 they're not legally barred.

19 Q. Okay.

20 A. Change their minds all the time.

21 Q. And you'd agree that if between
 22 forming the intent to send all of these
 23 assets to First Wives Entertainment and
 24 the date of the actual asset transfer,
 25 they said, you know what? We want to

1 RONALD COHEN
 2 use a different corporate structure,
 3 we're not going to send the assets,
 4 First Wives Entertainment Limited
 5 Liability Company wouldn't have had any
 6 claim to bring against US/Australia for
 7 not sending the assets, would it?

8 MR. ROSEN: Objection. Can I go
 9 to the bathroom?

10 MR. COHEN: After he answers this
 11 question, yes.

12 A. Can you repeat the question? I
 13 was distracted.

14 (The requested portion of the
 15 record was read.)

16 A. I don't know of any legally
 17 binding document that would have
 18 required First Wives Australia to send
 19 them to the debtor, so I guess the
 20 answer is there would be no legal claim.
 21 If the intent had changed and it was
 22 just people talking on an email or in a
 23 page like this, there would not be
 24 legally enforceable by First Wives US to
 25 get those assets.

1 RONALD COHEN
 2 If you turn to paragraph 6 of
 3 exhibit 12 it is again identical to the
 4 paragraph 6s that we looked at before
 5 and pointing to paragraph 31 for the
 6 details of the transfer at issue,
 7 correct?

8 A. Yes.

9 Q. If you then flip to paragraph 31,
 10 you'll see the allegations of the
 11 transfer here are again identical other
 12 than the date of the transfer, the
 13 alleged transfer and the amount of the
 14 transfer, correct?

15 MR. ROSEN: Objection. You can
 16 answer.

17 A. Yes.

18 Q. Only this time when your
 19 complaint says its bank account, you're
 20 not referring to First Wives
 21 Entertainment Limited Liability Company
 22 as you are every other time a complaint
 23 uses the language its bank account;
 24 you're referring to the bank account of
 25 US/Australia limited, correct?

1 RONALD COHEN

2 Q. Thank you. Let's take a break.

3 (A recess was had.)

4 MR. COHEN: Let's mark this one.
 5 (Exhibit 12, Complaint in Chapter
 6 7 action was marked for
 7 identification.)

8 Q. I put in front of you exhibit 12
 9 which is your complaint in this
 10 adversary proceeding. Do you see that?

11 MR. RYU: If I'm not mistaken
 12 this was actually exhibit 1 in the
 13 prior deposition.

14 MR. COHEN: I had a feeling it
 15 was, I just wasn't certain. Just for
 16 ease of reference we'll call it 12
 17 and it will be doubled up.

18 Q. So exhibit 12 is your client in
 19 this adversary proceeding, do you see
 20 that?

21 A. Yes, appears to be so, yes.

22 Q. And if you turn to paragraph 6 of
 23 exhibit 12, it is again identical to
 24 those prior paragraphs and point to --
 25 strike that.

1 RONALD COHEN

2 A. Yes, but we're also referring to,
 3 which you didn't refer me to the last
 4 phrase in paragraph 31 talks about a
 5 transfer of an interest in the debtor's
 6 property. I think our view is clear
 7 that an interest in the debtor's
 8 property can include interest that other
 9 people have in their name, including in
 10 their bank account. So I think it's
 11 clear that the word its is to be taken
 12 in context here and can have a broader
 13 meaning and in this case does have a
 14 broader meaning than in the other
 15 complaint. So it all depends on context
 16 as I kind of said earlier.

17 Q. Is there anything -- well let's
 18 put it this way. What fact alleged in
 19 this complaint do you think puts Mr.
 20 Charles on notice that the trustee's
 21 position in this claim is that assets
 22 that he received from a company other
 23 than First Wives Entertainment Limited
 24 Liability Company are property of the
 25 debtor and were actually received from

1 RONALD COHEN

2 the debtor on an alter ego theory or on
 3 your theory that a party's subjective
 4 intent to subsequently send those assets
 5 to the debtor makes it property in which
 6 the debtor has an interest?

7 MR. ROSEN: Objection.

8 A. You got a lot in there. But I
 9 would go back to what I just said
 10 previously in the last answer. We have
 11 alleged that the debtor has interest in
 12 that property and that's all that
 13 transfer involved an interest of in the
 14 debtor, an interest of the debtor in
 15 that property. It isn't so limited to
 16 the fact that someone else's name is on
 17 the bank account. And if he -- if he
 18 took that -- oh, I'm not worried it's
 19 because that came from an Australian
 20 bank account he didn't read the whole,
 21 the whole allegation.

22 So I think anyone looking at this
 23 and looking at the whole allegation
 24 would understand that we're claiming the
 25 debtor had an interest in that property

1 RONALD COHEN

2 on October -- on August 25th, 2014.
 3 Q. Even if it didn't come from the
 4 debtor's bank account?

5 MR. ROSEN: Objection.

6 A. Absolutely. Absolutely that's
 7 what I said.

8 Q. Okay. Even though the allegation
 9 was that it did come from the debtor's
 10 bank account?

11 MR. ROSEN: Objection. You're
 12 misstating.

13 A. The allegation it came from its
 14 bank account, it doesn't say who its
 15 was. It doesn't mean the debtor as
 16 Limited. It could mean other companies
 17 in which the debtor either was going to
 18 be receiving the assets from, shortly
 19 thereafter as I've testified, or that
 20 there was an intent that the debtor
 21 receive those assets or there was
 22 actually from the time it was all
 23 formulated back in July as those earlier
 24 emails referred to, intentionally going
 25 to become the debtor.

1 RONALD COHEN

2 Q. Just grammatically you understand
 3 that the word its is a pronoun that
 4 refers to an antecedent noun, correct?

5 MR. ROSEN: Wowza.

6 A. Yes, I understand it's a pronoun
 7 and I understand it refers to debtor and
 8 I understand the debtor can mean more
 9 than just this entity because I
 10 understand that the debtor's interest in
 11 property can be in property that is not
 12 in its name, is not in its current
 13 possession or control or custody. It
 14 could mean the debtor has an equitable
 15 interest in property, could mean a lot
 16 of things.

17 So all of which is up for the
 18 lawyers and the judge to decide in this
 19 case. And as a matter of pleading, I
 20 think it's understood that we don't have
 21 to specifically state chapter and verse
 22 of every possible theory in a pleading.

23 Q. You think you don't have to put
 24 in a pleading --

25 MR. ROSEN: Objection.

1 RONALD COHEN

2 Q. -- whose bank account the money
 3 came out of?

4 MR. ROSEN: Objection.

5 A. We did put in a bank account it
 6 came out of.

7 Q. Plaintiffs, right?

8 A. What's that?

9 Q. Plaintiff's bank account?

10 A. We're claiming that it came out
 11 of -- plaintiff. I'm the plaintiff. I
 12 had no bank account. It's not me. It's
 13 the debtor, okay? And who was the
 14 debtor?

15 Q. Of the debtor's bank account,
 16 correct?

17 A. Yes, the debtor's bank account,
 18 yes.

19 Q. And the debtor's bank account in
 20 your view is the bank account that is
 21 not the debtor?

22 MR. ROSEN: Objection.

23 A. That's not my statement. You're
 24 mischaracterizing. It's the debtor's
 25 bank account in the sense that money the

1 RONALD COHEN
 2 debtor had an interest in that money,
 3 was in that bank account, that's what
 4 we're talking about, not the bank
 5 account. Who cares about the bank
 6 account? We care about whose property
 7 it was. If you look at the word
 8 property that's the critical element,
 9 Mr. Cohen, not anything else. The
 10 keywords in that sentence are debtor's
 11 property. That's what I'm recovering.
 12 That your client got a fraudulent
 13 conveyance in our view and that's what
 14 we are seeking to recover.

15 Q. So do you think that the
 16 allegation that you're seeking to avoid
 17 the transfer of \$300,000 from the
 18 debtor's bank account was accurate or
 19 inaccurate?

20 MR. ROSEN: Objection.

21 A. Again you're misstating it.
 22 Don't try to trap me. I've already
 23 testified about the fact. The critical
 24 fact is whose property it was. The bank
 25 account it came out of in my view is not

1 RONALD COHEN
 2 email that he sent to the debtor's
 3 counsel. If you read that email it's
 4 very clear. You haven't even bothered
 5 to show me that. So that's what I'm
 6 talking about.

7 Q. I'd ask you to please stop
 8 yelling, sir.

9 A. I'm not yelling.

10 MR. ROSEN: He's not yelling.

11 A. I raised my voice slightly but I
 12 did not yell.

13 Q. I'm not asking you right now
 14 about this line that says it was a
 15 transfer of an interest in the debtor's
 16 property. You explained your view of
 17 that line. Whether I agree with it or
 18 not is irrelevant.

19 What I'm asking you now is this
 20 other allegation that you pled in your
 21 complaint which says that based on
 22 plaintiff's analysis of the debtor's
 23 financial affairs, plaintiff is seeking
 24 to void the transfer of \$300,000 from
 25 its bank account. You agree that its in

1 RONALD COHEN
 2 the relevant important fact. It's the
 3 property interest that the debtor had in
 4 those funds.

5 Q. I understand.

6 A. And that's what we are suing you
 7 on. If I didn't allege that I wouldn't
 8 be here and your client wouldn't have
 9 been sued. I'm alleging it's the
 10 debtor's property. You show the court
 11 it's not and you win.

12 Q. I understand that. I'm asking
 13 you a different question. I understand
 14 you have --

15 A. No, you're trying to trap me into
 16 a question to admit that the debtor name
 17 was not on that particular bank account.
 18 I'm not going. You can argue that as
 19 relevant and important to you and in
 20 your whatever it's going to be motion
 21 you're going to make in this case. You
 22 can allege all those things. I'm
 23 telling you that our view is it was the
 24 debtor's property and Mr. Choueka said
 25 it was the debtor's property in the

1 RONALD COHEN
 2 that sentence refers to the debtor,
 3 correct?

4 A. Yes.

5 Q. Do you believe it was accurate
 6 when you allege that the money was
 7 transferred from the debtor's bank
 8 account, regardless of whether it had an
 9 interest in the property, was it the
 10 debtor's bank account?

11 MR. ROSEN: Objection.

12 A. The debtor did not have legal
 13 title to that bank account at the time
 14 of the transfer.

15 Q. So that's a no, correct?

16 MR. ROSEN: No, that's not a no.
 17 A. That's my statement. They're not
 18 legal title. You want more? I'll give
 19 you more. Maybe you don't want me to
 20 volunteer. I'll tell you I believe the
 21 debtor had an equitable interest in that
 22 bank account.

23 Q. And what was the basis of that
 24 equitable interest?

25 MR. ROSEN: We've been through

RONALD COHEN

1 it.
 2 A. We've been through that before.
 3 Q. Because there was an intent to
 4 subsequently transfer the money,
 5 correct?
 6 A. And a statement from the
 7 gentleman most in the position to know
 8 in his view it was the debtor's and the
 9 gentleman in question is Mr. Choueka.
 10 Q. Just to be clear, that statement
 11 you're referring to is a two years later
 12 communication in the context of the
 13 bankruptcy, correct?
 14 A. In which Mr. Choueka would have
 15 every -- yes, that's correct, would have
 16 every to tell the truth, would have
 17 every, because it is a federal crime to
 18 conceal things and I assume he did it in
 19 order to correct what he thought was
 20 some confusion. And I can't imagine any
 21 reason why he would not have been
 22 telling the truth in that.
 23 But you're free to depose him and
 24 ask him questions directly as I haven't

RONALD COHEN

1 even talked to him.
 2 Q. You're not contending that that
 3 email was a business record of the
 4 defendants -- of the debtor's, excuse
 5 me, are you?
 6

7 MR. ROSEN: Objection.
 8 A. I don't know whether it is or
 9 isn't.
 10 Q. Okay. Was it made in the
 11 debtor's ordinary course of business?
 12 A. Again, I don't know that.

13 MR. ROSEN: Objection.
 14 A. I don't know the answer to that
 15 question.
 16 Q. Okay. Just checking.

17 MR. COHEN: Let mark this.
 18 (Exhibit 13, Chase Bank account
 19 statement was marked for
 20 identification.)

21 Q. Before we move on from exhibit
 22 13, I just want to wrap this up. At the
 23 time that you made the allegations in
 24 the adversary complaint, you were fully
 25 aware that the money had come out of

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1 US/Australia's bank account and you were
 2 proceeding on the theory that debtor had
 3 an interest in that property even though
 4 it was in US/Australia's bank account,
 5 correct?
 6

7 MR. ROSEN: Objection.
 8 A. I think that's -- I think that's
 9 a fair statement, yes.

10 Q. Okay. Let's take a look at
 11 exhibit 13. And exhibit 13 I will
 12 represent to you are the bank account
 13 statements that your attorney produced
 14 to us for US/Australia that are dated
 15 after August 2014. So if you take a
 16 look, have you seen these bank
 17 statements before?

18 A. No. I'm aware that my attorney
 19 turned them over to you. He mentioned
 20 we were giving you the bank statements.

21 Q. If you take a look at AC 738
 22 through 743 you'll see it's a Chase Bank
 23 statement for US/Australia Limited
 24 Liability Company from August 30th, 2014
 25 through September 30th, 2014. Do you

RONALD COHEN

1 see that?

2 A. Appears to be the case. Last
 3 page is blank, but yes.
 4 Q. And you see there are deposits
 5 into that bank account of \$1,205,460, do
 6 you see that?
 7

8 A. I do see a deposit at the bottom,
 9 total of deposits on the bottom of the
 10 first page of exhibit 13.
 11 Q. And you see also that the
 12 beginning balance in the account was
 13 \$174,437.77, correct?

14 A. Yes, that's what it says.
 15 Q. And then the ending balance after
 16 electronic withdrawals was about \$2,778,
 17 do you see that?
 18 A. Yes, I see that.

19 Q. So a significant amount of money,
 20 even after the transfer to First Wives
 21 Entertainment Limited Liability Company
 22 in August, was subsequently deposited
 23 into the accounts of this company First
 24 Wives US/Australia, correct?
 25 A. Appears to be the case. It was

1 RONALD COHEN
 2 Wives Entertainment, even if all that is
 3 accurately reflecting a loan, in your
 4 view that doesn't have any bearing on
 5 the payment to Andrew Charles?

6 MR. ROSEN: Objection.

7 Q. True or false?

8 MR. ROSEN: Objection.

9 A. I can't answer true or false.

10 All I can say is the entries, the
 11 entries here are what they are. I have
 12 no independent knowledge of them or even
 13 nonindependent knowledge of them. The
 14 only one that we actually went to look
 15 at further was the one I mentioned a
 16 minute ago to your client. The others I
 17 have not looked at at all.

18 Q. I appreciate that answer.

19 A. By the way, I should say there
 20 are some at the bottom that look very
 21 familiar. All City is Richard
 22 Pierpont's. So maybe I should say those
 23 also have some relevance to me since
 24 they refer to some of the complaints we
 25 looked at.

1 RONALD COHEN
 2 when I saw something like that, that was
 3 relevant to me.

4 When I saw payment of loans that
 5 others had made with the debtor's own --
 6 loans to the debtor as opposed to loans
 7 to ROE, I wasn't as interested because
 8 that obviously was satisfying the
 9 debtor's own debts. So what I was
 10 concerned about was whether the debtor
 11 was satisfying not its debts but another
 12 parties' debts and that's what drew my
 13 eye to things I mentioned.

14 Q. So because if the debtor is
 15 satisfying its own debts, then it's
 16 getting reasonably equivalent value,
 17 correct?

18 A. In a general sense, yes. But I
 19 would note that there are times when a
 20 company may be satisfying debts, whether
 21 their own debts or other peoples' debts,
 22 and it isn't getting reasonably
 23 equivalent value. For instance, if the
 24 company was hopelessly insolvent at the
 25 time it made those transfers I'm not

1 RONALD COHEN

2 Q. My question is, do you think
 3 there's any potential relevance to the
 4 \$1.3 million in loans reflected here if
 5 those are accurate? I'm not asking you
 6 if you did any due diligence. I know
 7 you didn't. I'm asking you, assuming
 8 those are accurate, would that have
 9 relevance?

10 MR. ROSEN: Objection.

11 A. I did a limited amount of
 12 diligence on these things because I did
 13 verify in fact our bank account record
 14 did show money going out to your client
 15 and even that's how we found his address
 16 because we didn't have it in our files
 17 otherwise. So thank God that was there.

18 Q. But you didn't do --

19 A. The other thing that I would say
 20 is that, and it's consistent with your
 21 question, I believe, is that what
 22 mattered to me were transfers of the
 23 debtor's property or interest in the
 24 debtor's property for which the debtor
 25 did not receive equivalent value. And

1 RONALD COHEN

2 sure that paying those debts might not
 3 be -- might not be considered reasonably
 4 equivalent value.

5 So there is a general rule like
 6 everything is subject to maybe some
 7 exceptions or some caveats that we would
 8 have to at least deal with.

9 Q. Understood. I don't think that's
 10 accurate, but that's neither here nor
 11 there.

12 A. Whatever. Our view doesn't
 13 matter, it's the judge's view that will
 14 matter on that.

15 Q. Exactly. But just to be clear,
 16 in the time period after August 2014,
 17 when you saw the debtor paying its own
 18 debts, you weren't concerned that it was
 19 getting -- wasn't getting reasonably
 20 equivalent value because at that time if
 21 it was paying off its own debts and
 22 getting an elimination of an equivalent
 23 amount of liability for the money that
 24 it was paying out, in your view it was
 25 getting reasonably equivalent value,

1 RONALD COHEN
2 correct?

3 MR. ROSEN: Objection.

4 A. In our view we were less
5 concerned with that because it appeared
6 it was paying for not just loans but
7 also, for instance, invoices for
8 services that were provided to it.

9 So, in a similar category to
10 loans where people who had claims on the
11 debtor because they had provided legal
12 services or accounting services or
13 production expenses or things that the
14 debtor was on the hook for, we saw
15 payments going out to call it talent.

16 The people that we saw names we
17 recognized were involved with the show,
18 Rupert Holmes was one name, Brian
19 Holland was another name. There are a
20 bunch of names in there, all of whom
21 have something to do with the show. And
22 I think they were clearly owed money by
23 the debtor. We didn't challenge those.

24 Q. And also I think you mentioned
25 the -- I forgot his first name, but Mr.

1 RONALD COHEN

2 Ray, he had a loan to the company that
3 the company paid back, you guys didn't
4 try to claw that back?

5 A. I again didn't challenge that.
6 There was the other two gentlemen, one
7 gentleman with two transfers. I think
8 his name was also Paul something but I
9 forgot. Gilchrist maybe?

10 Q. Yes.

11 A. Yes. We again did not challenge
12 those. We had no information that they
13 were paying somebody else's debts.

14 Q. Okay. Now, let me ask you a
15 question. Just work with me for the
16 hypothetical. If US/Australia -- let's
17 take US/Australia out of this for a
18 second.

19 If the debtor owed \$300,000 to
20 Reachout Entertainment and paid \$300,000
21 to Reachout Entertainment, would that be
22 a fraudulent conveyance in your view?

23 A. If it paid Reachout Entertainment
24 directly as opposed to having someone
25 pay it indirectly, yes, I believe that

1 RONALD COHEN
2 would not be a fraudulent transfer if
3 they paid it directly.

4 When it's paid indirectly by
5 paying a third party, I believe they run
6 into problems.

7 Q. So if the debtor transfers
8 \$300,000 to Reachout Entertainment and
9 Reachout Entertainment then transfers
10 that same \$300,000 to Andrew Charles and
11 debtor cancels \$300,000 of debt to
12 Reachout Entertainment, then in your
13 view that's reasonably equivalent value,
14 that wouldn't be an issue. But if the
15 debtor, instead of having that
16 intermediate step, just gives the money
17 to Andrew Charles directly and Reachout
18 Entertainment cancels that same \$300,000
19 of debt, then that's a fraudulent
20 conveyance in your view?

21 A. It can be.

22 Q. What's the substantive difference
23 to the debtor between those two
24 transactions? In both cases, just to be
25 clear, in both cases the debtor pays

1 RONALD COHEN

2 \$300,000 and receives \$300,000 of --
3 sorry, and eliminates \$300,000 of debt
4 that it owes to the same entity,
5 Reachout Entertainment, so what is the
6 substantive economic difference if the
7 money goes to Reachout directly or to
8 Andrew Charles?

9 A. The value, the initial value from
10 the transfer went to Reachout when its
11 debt to Charles was canceled.

12 We conferred a benefit on
13 Reachout from doing that. I believe
14 that any benefit we got from conferring
15 of that benefit on Reachout, and Mr.
16 Charles was the ultimate beneficiary
17 here, you know, is a problem, for
18 instance, if we did not get anything of
19 value back. And I don't believe that if
20 we're insolvent at the time we do that
21 transfer we are really getting anything
22 back.

23 As I said earlier, we may be a
24 little less insolvent. But we're still
25 insolvent. There's no benefit to us for

1 RONALD COHEN
 2 having discharged a third party's debt
 3 in this case, notwithstanding your
 4 original hypothetical, if the payments
 5 had been made A to B and then B to C,
 6 there would be no direct claim because
 7 they decided to do it directly from A to
 8 C here, I think you run into a problem
 9 in the fraudulent transfer context.
 10 That's my basis.

11 Q. What is the economic difference
 12 to the debtor if the money is paid
 13 directly?

14 A. The debtor is out \$300,000 to
 15 Charles that it wouldn't otherwise be
 16 out if it paid, if it paid directly and
 17 it had value and value came to it. But
 18 value didn't come to it.

19 Q. Hold on. If it paid Reachout
 20 directly and got a cancellation of that
 21 amount of debt for that payment then it
 22 would have gotten value, yes?

23 A. In the event that the debtor was
 24 solvent and it could pay its bills.
 25 Otherwise, yes, I believe there would be

1 RONALD COHEN
 2 value to the debtor for having paid
 3 Reachout in this situation, or it pays
 4 Reachout directly.

5 Q. Again, you were aware of a number
 6 of payments to Reachout directly during
 7 the same time period that you chose not
 8 to bring a fraudulent conveyance claim,
 9 correct?

10 A. I don't know that I had --

11 MR. ROSEN: Objection.

12 A. -- conveyance claim against
 13 Reachout. Reachout may have been a
 14 creditor of the debtor. I'm not sure
 15 about that. But it appeared that again
 16 Reachout was defunct and Mr. Charles is
 17 not defunct. So therefore we went after
 18 the person we can go after which is a
 19 trustee's right to do I understand.

20 Q. I understand that a fraudulent
 21 conveyance, if it's conveyed, you can
 22 actually go to any subsequent, go after
 23 any subsequent transferee as well,
 24 correct?

25 A. But the subsequent transferee has

1 RONALD COHEN
 2 claims, defenses I should say that a
 3 direct transferee would not. Why would
 4 I do that where I have direct transfers
 5 to Charles from our bank account or
 6 Australia's bank account or whoever's
 7 bank account? Why should I have to
 8 bother going through a subsequent
 9 transferee when I have him as a initial
 10 transferee?

11 Q. It's looks like they paid out
 12 between May of 2014 through November of
 13 2014, \$1,142,000 to Reachout
 14 Entertainment. Do you see that
 15 reflected there?

16 A. Only claims from May forward are
 17 relevant. And again, if on the books of
 18 the debtor Reachout Entertainment was a
 19 creditor and made loans and they were
 20 paying those loans back, typically that
 21 would not be a fraudulent transfer.

22 The other side of the coin is,
 23 however, is that there is no -- it's not
 24 clear to me that when the debtor makes a
 25 payment on behalf of Reachout

1 RONALD COHEN
 2 Entertainment that that's the same as
 3 making a payment to Reachout.

4 Q. So the payment on behalf of
 5 Reachout is that payment that's
 6 reflected here, it's booked on 8/25/14
 7 which we know is inaccurate, but it's
 8 booked here on 8/25 on behalf of
 9 Reachout to Andrew Charles for \$300,000.
 10 You see that?

11 A. That's one of the ones I've sued
 12 about, yes.

13 Q. And that payment is actually
 14 reflected in this return of loan column
 15 here for Reachout Entertainment, do you
 16 see that?

17 A. I see that. But the critical
 18 thing is --

19 Q. No, that's the answer --

20 A. Mr. Charles is the transferee and
 21 not Reachout. That's the critical fact,
 22 Mr. Cohen, you are ignoring. Just like
 23 Andrew Charles's name, All City
 24 Surgical, Richard Pierpont are also
 25 named. They were all sued.

1 RONALD COHEN

2 A. I don't think it's an accounting
 3 question frankly, I think it's a legal
 4 question.

5 Q. Did you ask anybody for help in
 6 assessing that, or did you make that
 7 assessment on your own?

8 A. My counsel has advised me on the
 9 legal questions. I have counsel in this
 10 case. And I can't tell you what we
 11 talked about.

12 Q. I'm not going to ask you what you
 13 talked about. Other than advice of
 14 counsel, did you do anything personally
 15 to verify the claims that you're making,
 16 that the debtor did not receive fair
 17 value in exchange for these payments?

18 MR. ROSEN: Objection. That's
 19 been asked and answered about 40
 20 times.

21 Q. You can answer it again.

22 A. No, I did not do anything. I did
 23 refer at one point to a discussion we
 24 had with Mr. Baer and he did bring some
 25 of these payments to our attention. But

1 RONALD COHEN

2 it wasn't just his say so that we relied
 3 on. We relied on the bank account
 4 records and the emails I referred to and
 5 other matters to kind of clarify that in
 6 our view payment of a third party's
 7 debts was not necessarily value to the
 8 debtor whereas payments of its own debts
 9 would be.

10 Q. And that's why again you weren't
 11 bringing a claim for payment of its own
 12 debts to Reachout Entertainment?

13 A. I believe the record shows that
 14 our claims were only made payments on
 15 behalf of Reachout Entertainment which I
 16 understand by the way was itself
 17 insolvent and defunct and not in a
 18 position to be paid because clearly they
 19 would have been a beneficiary of these
 20 payments, and I believe under the
 21 fraudulent transfer laws, you can check
 22 if I'm wrong, I can actually sue the
 23 party for whose benefit any transfer was
 24 made. And I clearly believe in this
 25 situation Reachout was a party to whose

1 RONALD COHEN

2 benefit these transfers were made.

3 Q. Clearly?

4 A. And clearly if they were not
 5 defunct and were operating and had cash
 6 in a bank account and were a real going
 7 concern I would have sued them as well.

8 Q. But only on these payments, not
 9 on the payments made directly to them?

10 A. I would not have bothered to sue
 11 them for the payments that were their
 12 own.

13 Q. And you were aware of the
 14 payments directly to Reachout?

15 A. There may have been preferences
 16 but I won't get into that and those
 17 fraudulent transfers.

18 Q. But you were aware that there
 19 were payments made directly to Reachout
 20 on account of loans that Reachout had
 21 made to the debtor, correct?

22 A. I've now become aware of that and
 23 I do believe that the schedule that we
 24 saw, that Mr. Baer showed us originally
 25 which has been produced to you, I

1 RONALD COHEN

2 believe, did show some of these payments
 3 directly to Reachout. Some of the ones
 4 that are on here were certainly on that
 5 schedule. Maybe all of them, but
 6 certainly some of them looked like they
 7 were there.

8 Q. Did you do anything to
 9 investigate whether the payments that
 10 were made on behalf of Reachout reduced
 11 the debtor's outstanding debt to
 12 Reachout?

13 A. No.

14 MR. COHEN: Let's take a ten
 15 minute break if you don't mind.

16 (A recess was had.)

17 (Exhibit 16, JPMorgan Chase
 18 report or advice of debit was marked
 19 for identification.)

20 Q. You have in front you a document
 21 that's been marked as exhibit 16. Do
 22 you recognize it?

23 A. Yes. This one I've seen.

24 Q. And what do you recognize it as?

25 A. I recognize it on the stationery